

Legislative Audit Division

State of Montana



Report to the Legislature

November 1996

Financial-Compliance Audit

For the Two Fiscal Years Ended June 30, 1996

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Judicial Branch

This report contains six recommendations for improvement in the branch's operations. Items addressed in the report include:

- ▶ Recording complete financial information on the state's accounting records.
- ▶ Obtaining a sufficient funding source for the Judges' Retirement System.
- ▶ Following federal regulations regarding federal financial assistance.
- ▶ Working to revise or repeal state laws applicable to Judicial Branch operations.

This report also contains one recommendation to the legislature to clarify the state law regarding the state agency which is to request funds from the Supreme Court for youth court and probation foster care placements.

PLEASE

Direct comments/inquiries to:
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PO Box 201705
Helena MT 59620-1705

FINANCIAL-COMPLIANCE AUDITS

Financial-compliance audits are conducted by the Legislative Audit Division to determine if an agency's financial operations are properly conducted, the financial reports are presented fairly, and the agency has complied with applicable laws and regulations. In performing the audit work, the audit staff uses standards set forth by the American Institute of Certified Public Accountants and the United States General Accounting Office. Financial-compliance audit staff members hold degrees with an emphasis in accounting. Most staff members hold Certified Public Accountant (CPA) certificates.

Government Auditing Standards, the Single Audit Act of 1984 and Amendments of 1996, and OMB Circular A-128 require the auditor to issue certain financial, internal control, and compliance reports. This individual agency audit report is not intended to comply with these reporting requirements and is therefore not intended for distribution to federal grantor agencies. The Legislative Audit Division issues a statewide biennial Single Audit Report which complies with the above reporting requirements. The Single Audit Report for the two fiscal years ended June 30, 1995 has been issued. Copies of the Single Audit Report can be obtained by contacting:

Single Audit Coordinator
Office of Budget and Program Planning
State Capitol
Helena MT 59620
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LEGISLATIVE AUDIT DIVISION

November 1996

The Legislative Audit Committee
of the Montana State Legislature:

This is our financial-compliance audit report on the Judicial Branch for the two fiscal years ending June 30, 1996. Included in this report are six recommendations to the branch concerning recording financial activity, compliance with federal regulations, securing adequate funding for the Judges' Retirement System, and seeking changes in state law. The report also contains one recommendation to the legislature to clarify state law. The branch's written response to audit recommendations is included in the audit report.

We thank the Chief Justice, the Court Administrator, the Clerk of the Supreme Court, the Law Librarian, and Judicial Branch personnel for their cooperation and assistance throughout the audit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott A. Seacat", is written over a horizontal line.
Scott A. Seacat
Legislative Auditor

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Legislative Audit Division

Financial-Compliance Audit

For the Two Fiscal Years Ended June 30, 1996

Judicial Branch

Members of the audit staff involved in this audit were Frieda Houser, Scott Hoversland, Wayne Kedish, and Kris Wilkinson.

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<u>Table 1</u>	Montana Judges' Retirement System Contributions	Page 12
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Elected and Administrative Officials

Supreme Court			<u>Term Expires</u>
	Jean Turnage	Chief Justice	2001
	Charles E. Erdmann	Justice	1997
	Karla Gray	Justice	1999
	William E. Hunt, Sr.	Justice	2001
	William Leaphart	Justice	2003
	James C. Nelson	Justice	2003
	Terry Triewailer	Justice	1999
Clerk of Supreme Court	Ed Smith	Clerk of Supreme Court	2001
Administrative Officials	Patrick Chenovick	Court Administrator	
	Judith Meadows	State Law Librarian	

Judicial Branch

We performed a financial-compliance audit of the Montana Judicial Branch for the two fiscal years ended June 30, 1996. Of the ten prior audit recommendations, the Judicial Branch implemented six recommendations, partially implemented one recommendation and did not implement three recommendations.

We issued an unqualified opinion on the financial schedules which means the reader may rely on the presented financial information and the supporting data on the Statewide Budgeting and Accounting System.

This audit report contains six recommendations to the branch, one recommendation to the legislature, and one disclosure issue. The recommendations relate to recording complete financial information on the state's accounting records, compliance with federal regulations, working to obtain a funding source that allows sufficient contributions to the Judges' Retirement System, reviewing state laws to determine if they should be revised or repealed, and charging expenditures to the programs that receive the benefit. The disclosure issue relates to a prior audit recommendation and discusses a difference of opinion between the Legislative Audit Division and the Judicial Branch. The facts of the issue have been disclosed on page 19 to bring attention to it and focus on developing a solution.

The audit revealed a provision of state law that allowed the Department of Corrections to use up to \$500,000 of taxes assessed and collected on motor vehicles to offset the need to request additional funding for youth court and foster care placements. Additional information regarding this issue is contained on page 16 of this report.

Judicial branch management concurred with four of the recommendations and the Supreme Court Clerk concurred with one additional recommendation.

Report Summary

The listing below serves as a means of summarizing the recommendations contained in the report, the branch's response thereto, and a reference to the supporting comments.

Recommendation #1 We recommend the branch record expenditure abatements and expenditure accruals on SBAS in accordance with state law and accounting policy. 9

Branch Response: Concur. See page B-3.

Recommendation #2 We recommend the branch establish procedures to ensure compliance with federal regulations related to matching and eligibility requirements. 11

Branch Response: Concur. See page B-3.

Recommendation #3 We recommend the branch continue to work with PERD to seek legislation allocating additional revenue to ensure sufficient contributions are made to the Judges' Retirement System as required by state law. 13

Branch Response: Concur. See page B-4.

Recommendation #4 We recommend the branch:

A. Charge personal service expenditures to the programs receiving the benefit.

Branch Response: Concur. See page B-4.

B. Work with the legislature to obtain authority to charge personal service expenditures to the programs receiving benefits. 13

Branch Response: Concur. See page B-4.

Recommendation #5 We recommend the branch seek legislation to repeal section 3-2-405, MCA, which requires the Clerk of the Supreme Court to settle with the State Auditor. 14

Clerk of the Supreme Court Response: Concur. See page B-7.

Recommendation #6 We recommend the branch:

A. Comply with section 3-2-604, MCA, related to distribution of supreme court decisions, or

Branch Response: Do Not Concur. See page B-5.

B. Seek legislation to allow alternative methods
of distribution. 16

Branch Response: Do Not Concur. See page B-5.

Recommendation #7

We recommend legislation be enacted to clarify
section 3-5-901(3)(a), MCA, to have the state agency
with the youth court and foster care probation placements
appropriations certify to the supreme court that these
appropriations will be inadequate to fund those costs. 17

Branch Response: The roll of the branch in the implemen-
tation is not clear. See page B-5.

Introduction

We performed a financial-compliance audit of the Judicial Branch (branch) for the two fiscal years ended June 30, 1996. The audit objectives were to:

1. Determine the branch's compliance with applicable laws and regulations.
2. Make recommendations for improvements in the management and internal controls of the branch.
3. Determine if the financial schedules present fairly the results of operations of the branch for the two fiscal years ended June 30, 1996.
4. Determine the implementation status of prior audit recommendations.

This report contains six recommendations to the branch. These recommendations address areas where the branch can improve financial reporting, compliance with federal regulations, and the actuarial soundness of the Judges' Retirement System. The report also contains one recommendation to the legislature to clarify state law and one disclosure issue related to a difference of opinion between the Legislative Audit Division and the Judicial Branch. Other areas of concern not having a significant effect on the successful operations of the branch are not included in this report, but have been discussed with management. In accordance with section 5-13-307, MCA, we analyzed and disclosed the costs, if significant, of implementing the recommendations made in this report.

Background

The Constitution of the State of Montana vests the judicial power of the state in a Supreme Court, district courts, justice courts, and such other courts as may be provided by law. The judiciary forms the third branch of state government. The Supreme Court is the highest court of the state of Montana. The court, consisting of a chief justice and six associate justices, has appellate jurisdiction, and is a court of limited original jurisdiction. The chief justice is the head of the Supreme Court. The court administrator, appointed by the Supreme Court, serves as its administrative officer. The Supreme

Introduction

Court also appoints the law librarian. The librarian develops and maintains the law library collection and library services. The Supreme Court also has general supervisory control over all other courts and may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar, and conduct of its members. The rules of procedure are subject to disapproval by the legislature in either of the two sessions following promulgation.

Supreme Court justices and district court judges are elected to office in nonpartisan elections serving eight-year terms and six-year terms, respectively. Terms of office and the procedure for filling vacancies on the court are established in the Constitution and by statute. The legislature determines salaries for the justices and district court judges, establishes judicial districts, and provides for the number of judges in each district. Currently there are 37 district court judges in 21 judicial districts.

The Clerk of the Supreme Court is elected on a partisan ballot in a statewide election to a six year term. The clerk is statutorily charged with the responsibility of providing access to the Supreme Court. The clerk manages the court's caseload, legal filings, and is custodian of the court's records. The clerk keeps the roll of attorneys, and collects the annual attorney license tax.

The branch is divided into seven programs for fiscal management with a total authorized full-time equivalent (FTE) level of 97.75 for fiscal year 1995-96. A description of each program follows:

1. The Supreme Court Operations program accounts for the costs of operation of the Supreme Court and administers special projects related to foster care and adoption placements. The program also administers court automation projects.
2. The Boards and Commissions program accounts for expenditures for the boards and commissions established either by statute or the Supreme Court. These boards and commissions handle areas such as judicial discipline, rules, admission to the bar, and various other substantive issues aimed at improving and monitoring the administration of justice.

-
3. The Law Library program accounts for the operation of the State Law Library. The library is maintained for use by members and staff of the Supreme Court and the legislature, state officers and employees, members of the bar, and the general public.
 4. The District Court Operations program accounts for the payment of salaries, travel, and training expenses for district court judges.
 5. The Water Courts Supervision program accounts for the expenditures of the water courts. Montana's Water Court was created by the 1979 Legislative Session in response to concerns that the existing program of water adjudications, which was set up under the 1973 Water Use Act, would take one hundred years to complete. The legislature created the Water Court to "expedite and facilitate" the adjudication of existing water rights that were in existence prior to 1973. The Water Court has exclusive jurisdiction to interpret and determine existing water rights.
 6. The Clerk of Court program accounts for the costs of operation of the Clerk of the Supreme Court.
 7. The District Court Reimbursement program reimburses counties for certain adult criminal expenses. Costs of this program are offset by taxes assessed on vehicles and deposited in the General Fund.

Attached Agencies

There are two agencies attached to the Supreme Court. The Montana Medical Legal Panel and the Montana Chiropractic Legal Panel.

Montana Medical Legal Panel

The Montana Medical Legal Panel was established by the Montana Medical Legal Panel Act, as authorized by Title 27, chapter 6, MCA. The panel is attached to the Montana Supreme Court for administrative purposes only.

Montana Chiropractic Legal Panel

The Montana Chiropractic Legal Panel was established as a state agency in January 1990 by Chapter 262, Laws of 1989. Its' duties are set forth in Title 27, chapter 12, MCA. The panel is attached to the Montana Supreme Court for administrative purposes only.

Each panel reviews malpractice claims made against medical or chiropractic physicians. The panels must hear and make a decision

Introduction

on a claim before the claim can be filed in court. The panels determine if there is substantial evidence the stated act or omission occurred, whether the act or omission constitutes malpractice, and if there is reasonable medical probability of injury because of the act or omission.

Each panel is audited separately from the Judicial Branch. Copies of the panels' audit reports are available through the Legislative Audit Division.

Prior Audit Recommendations

Prior Audit Recommendations

Our prior audit report for the two fiscal years ended June 30, 1994 contained ten recommendations. Of the ten recommendations, the branch implemented six recommendations, partially implemented one recommendation and did not implement three recommendations.

The four recommendations not fully implemented relate to allocating the branch budget on the statewide budgeting and accounting system (SBAS) (discussed below), charging personal service expenditures to the programs that receive the benefit (page 13), seeking legislation to ensure proper funding of the Judges' Retirement System (page 11), and recording leave time for the Water Court Judge (page 19).

In our previous report, we recommended the branch comply with state law by allocating its budget on SBAS by first level expenditure categories. In fiscal year 1995-96, the branch allocated the majority of its budget on SBAS. Two budget amendments were not fully allocated. Branch personnel noted they overlooked allocating one budget amendment and when the oversight was noticed, the cutoff date for recording allocations had passed. For the other amendment, the branch did not intend to use all of the authority, therefore the entire amount was not allocated. We do not make a repeat recommendation during this audit because the branch has shown significant improvement in allocating its budget on SBAS in accordance with state law. We encourage the branch to continue to work to properly allocate its budget.

Findings and Recommendations

Incomplete Financial Information

State law requires agencies to input all necessary transactions to the statewide budgeting and accounting system (SBAS) before the close of the fiscal year. This is required in order to present the receipt, use, and disposition of all money and property for which the agency is accountable in accordance with generally accepted accounting principles. The intent of this law is to ensure the state's accounting records fairly present agencies' operations. The following two sections discuss instances where the branch did not properly record all financial activity in accordance with state law and accounting policy.

Improper Expenditure Abatements

An expenditure abatement is a transaction that reverses an expenditure due to a reimbursement, refund, error, or correction. State accounting policy allows the use of abatements to record reimbursements for non-recurring and non-routine expenditures made for the convenience of an outside party. Agencies are not appropriated for these costs. In many instances, the practice of reversing, or abating expenditures can understate revenues and expenditures. In addition, reversing expenditures creates additional appropriation authority. During our audit of the branch, we noted the following instances where the branch inappropriately abated expenditures.

- Section 3-1-317, MCA, passed by the 1995 Legislature, assesses a \$5 surcharge for certain actions of the courts. The amounts collected are deposited in the state Special Revenue Fund and used to fund court automation projects. Prior to fiscal year 1995-96, court automation projects were funded by the General Fund. The branch requires courts to pay a portion of the court automation expenses. The amount depends on the court's ability to pay. When the branch receives a payment from a court, the money is deposited and the related expenditures are reversed on the branch's accounting records. To appropriately record this activity, the branch should record the money received as revenue rather than abating the expense. If the branch were to record the revenue in the state Special Revenue Fund, it would need to request the budget authority to spend the funds for court automation projects. The related expenditures could then be recorded against this budget authority rather than being removed from SBAS.

Findings and Recommendations

As a result of the branch's practice of abating expenditures for reimbursements received from the courts, state Special Revenue Fund revenues and expenditures are understated by \$38,361 and \$54,160 in fiscal years 1994-95 and 1995-96, respectively. Branch personnel explained they believe the practice of reversing expenditures for the amount collected from counties more accurately reflected the state's cost of the court automation projects.

- The branch contracted with Montana State University-Bozeman to provide software installation, trouble shooting, and training to courts of limited jurisdiction. The branch abated \$1,495 of these expenditures; understating expenditures for the court automation project in fiscal year 1994-95. If the branch had properly recorded the expenditures in the General Fund, SBAS would have reflected \$1,495 of overspent appropriation authority.
- In fiscal year 1995-96, the branch recorded transactions that resulted in an \$11,791 short-term loan from the General Fund to the state Special Revenue Fund for court automation projects. The branch abated expenditures from the state Special Revenue Fund and set up accounts receivable in the General Fund. Branch staff indicated the surcharge for court automation went into effect in fiscal year 1995-96, but prior to this, the costs were recorded in the General Fund. Branch personnel noted it was an oversight that the accounts receivable were improperly recorded in the General Fund rather than the Special Revenue Fund.
- During fiscal year 1995-96, the branch received \$5,114 from the federal government for reimbursement of start-up costs of the State Court Improvement Program (CFDA #93.586). The branch recorded the cash received and abated the expenditures, which were recorded in the General Fund in fiscal year 1994-95. Branch personnel noted this was an error and they should have transferred the expenditures from the General Fund and recorded both the revenue and the expenditures in the federal Special Revenue Fund. As a result of the error, revenues and expenditures are understated by \$5,114 for fiscal year 1995-96 on SBAS.

Improper Use of Expenditure Accrual

In fiscal year 1995-96 the branch paid for computer equipment purchased by the court automation program from funds which were set aside in fiscal year 1994-95 to pay for a professional consulting service contract in the supreme court operations program. This resulted in expenditures in the court automation program being understated and expenditures in the supreme court operations program being overstated by \$14,000 in fiscal year 1994-95. As previously noted, the appropriation authority for the court automation program would have been exceeded by \$1,495 due to errors noted. This error increases that amount to \$15,495.

Branch personnel noted the professional consulting services were not required as they were paid for by another state agency. Therefore, the branch used the funds to purchase computer equipment. Branch personnel could have requested a program transfer to properly record the expenditures.

Recommendation #1

We recommend the branch record expenditure abatements and expenditure accruals on SBAS in accordance with state law and accounting policy.

Federal Compliance

The branch received financial assistance of approximately \$115,000 from two federal agencies during fiscal year 1995-96. The agencies were the U.S. Departments of Health and Human Services, and Justice (through a subgrant from the Montana Board of Crime Control). The branch did not receive any federal financial assistance in fiscal year 1994-95. We performed tests to determine the branch's compliance with selected federal regulations. We identified the following areas where the branch could improve procedures to comply with federal regulations.

Findings and Recommendations

Allowable Match

The branch received \$29,000 from the Violence Against Women Formula Grant (CFDA #16.588) during fiscal year 1995-96. The funds were received through a subgrant with the Montana Board of Crime Control (MBCC) which extends into fiscal year 1996-97. The grant agreement with the MBCC states the branch will provide a match of 25 percent of total project budget. The total project budget was \$69,195, therefore the branch was to provide \$17,298 of match and the grant would provide the remaining \$51,897. The match was to be provided by in-kind contributions which include personal service costs, travel costs, and supplies.

Federal regulations require the recipient of financial assistance to ensure that match is identified in a manner which guarantees its accountability. They further require that costs charged to an award be identified as time devoted or materials expended specifically for the purpose of the award. The branch claimed \$11,035 of match during fiscal year 1995-96. Of this amount, only \$1,508 of travel expenditures was adequately documented. The remaining \$9,528 of match related to personal service and supply costs. The dollar amounts were estimates of time spent working on the project and an allocation of budgeted match related to supplies over the grant period. Branch personnel noted records of actual time spent or supplies used on the project were not kept, therefore an estimate was the only method they had to determine match. As a result, we question \$9,528 of expenditures claimed as match for the Violence Against Women Formula Grant. The branch should establish procedures related to proper documentation of match to ensure compliance with federal regulations.

Eligibility

The federal government publishes a list of entities and individuals who are not eligible to receive federal financial assistance (referred to by the federal government as debarments and suspensions). Federal regulations require agencies to subcontract federal funds only to eligible entities or individuals and to obtain certification regarding debarment and suspension from the subcontractor.

The branch subcontracts for the work related to the Violence Against Women Formula Grant (CFDA #16.588) and for a portion of the work related to the State Court Improvement Program (CFDA

#93.586). The branch did not review the listing for the subcontractors on either of the projects. In addition, the branch did not obtain the required certification from the subcontractors. We reviewed the list of subcontractors and determined they were eligible to participate in the projects.

Branch personnel noted they were not aware of the requirements until we brought them to their attention. The branch should establish procedures to ensure an eligibility check is performed and proper certification from subcontractors is received as part of its' contracting process.

Recommendation #2

We recommend the branch establish procedures to ensure compliance with federal regulations related to matching and eligibility requirements.

Montana Judges' Retirement System

Supreme court justices and district court judges are members of the Montana Judges' Retirement System (JRS). The retirement system, established in 1967, had 44 active members and 47 members receiving benefits at fiscal year end 1995-96. Section 19-5-404, MCA, requires the branch to contribute to JRS district court fees collected under section 25-1-201, MCA, in an amount equal to 34.71 percent of salaries paid to district judges and supreme court justices.

The branch remits all district court fees collected to JRS. However, branch personnel said the fees collected are not enough to pay the percentages required by law.

Table 1 illustrates the difference between actual fees collected and remitted to JRS and the amount required by statute during the audit period.

Findings and Recommendations

Table 1

Montana Judges' Retirement System Contributions

	Fiscal Year <u>1994-95</u>	Fiscal Year <u>1995-96</u>
Contributions		
Required per Statute	\$968,426	\$1,015,443
Collected and Remitted	<u>564,786</u>	<u>576,794</u>
Contribution Shortage	<u>\$403,640</u>	<u>\$ 438,649</u>

Source: Compiled by the Legislative Audit Division from Judicial Branch records.

Branch personnel have been tracking the contribution shortfall and according to branch records, the shortfall as of June 30, 1996, totals approximately \$2,739,000. This shortfall relates to the period from fiscal year 1984-85 through fiscal year 1995-96.

The revenue source pledged under law is not sufficient to meet the requirements of the statute and has resulted in the JRS not being actuarially sound. The Public Employees Retirement Board's 1995 Annual Financial Report contains the following information about the effect of the shortfall.

"District court fees have not generated the cash flow for the JRS as required by section 19-5-404, MCA, for several years. The actual district court fees remitted during fiscal year 1995 provided only 21.05 % of active judges salaries, a shortfall of 13.66 %. At the present time, the JRS is able to meet all current obligations, but the continued funding shortfall has precluded the actuary from certifying the actuarial soundness of this system."

Constitutional amendment number 25, passed by voters in the November 8, 1994 General Election, amends Article VIII section 13 of the Montana Constitution to require public retirement systems to be funded on an actuarially sound basis. The branch and the Public Employees' Retirement Division (PERD) have been working together to solve the insufficient contributions to JRS. During the

Findings and Recommendations

1995 Legislative Session, legislation introduced by PERD which included funding to correct the shortfall was not passed.

Recommendation #3

We recommend the branch continue to work with PERD to seek legislation allocating additional revenue to ensure sufficient contributions are made to the Judges' Retirement System as required by state law.

Personal Service Expenditures

During our prior three audits, we identified employees whose salaries were charged to incorrect programs. We found this to still be the case during this audit. A majority of the court administrator's accounting technician's salary was charged to the water courts program. The employee's time attributable to the water court program is minimal. Branch personnel stated the position has been funded in this manner for approximately ten years. In addition, they noted no alternative funding source currently exists. Changing the funding source for this position would require the approval of the legislature.

The current funding practice understated the state General Fund expenditures of court operations by \$17,156 in fiscal year 1994-95 and \$12,660 in fiscal year 1995-96, while the Special Revenue Fund water courts' expenditures are overstated by the same amounts.

Recommendation #4

We recommend the branch:

- A. Charge personal service expenditures to the programs receiving the benefit.**
- B. Work with the legislature to obtain authority to charge personal service expenditures to the programs receiving benefits.**

Findings and Recommendations

State Compliance

The Judicial Branch of state government is provided for in the Montana Constitution. We tested the branch's compliance with selected state laws related to powers and duties of the branch. The following three report sections discuss instances where the branch should work with the legislature to revise or repeal existing state laws.

Clerk of the Supreme Court Fees

The Clerk of the Supreme Court (clerk) collects various fees related to filings, copying documents, certificates of good standing as an attorney and certified copies under seal. Section 3-2-404, MCA, requires three-fourths of all the fees be deposited in the General Fund and one-fourth of all the fees be paid to PERD for judges' retirement. At the end of each month, the clerk transfers one-fourth of all the fees to PERD. Total court fees for fiscal year 1995-96 were approximately \$311,125.

Each quarter an employee from the State Auditor's Office reviews the clerk's deposits of fees and payments to PERD to ensure they are proper. Employees from the clerk's office and the State Auditor's Office did not know the reason for the State Auditor review. The State Auditor employee noted she has never found a problem with the transactions. Section 3-2-405, MCA, enacted in 1895, requires the clerk to account for and settle all fees collected with the State Auditor on a quarterly basis.

In 1895 the state did not have a statewide accounting system or a post-audit function. The need for the clerk to settle with the State Auditor was a "check and balance" to ensure proper accounting of public money. With the current sophisticated statewide budgeting and accounting system and a post-audit function it appears section 3-2-405, MCA, serves no useful purpose and may be a duplication of effort.

Recommendation #5

We recommend the branch seek legislation to repeal section 3-2-405, MCA, which requires the Clerk of the Supreme Court to settle with the State Auditor.

Copies of Supreme Court Decisions

Section 3-2-604, MCA, notes that upon publication of each volume of reports containing supreme court decisions, the Supreme Court shall purchase up to 221 copies from the publisher and distribute them at no cost. The law requires the copies be distributed to:

- A. The State Library for distribution, five copies;
- B. The Library of Congress, four copies;
- C. The University of Montana law library, two copies;
- D. Each justice of the Supreme Court, district judge, and county attorney, one copy;
- E. The Law Library of the state of Montana, four copies;
- F. The Attorney General, 11 copies;
- G. Other institutions, publishers, authors, and libraries with which the state law librarian has established a system of exchange for material of comparable value, up to 50 copies; and
- H. The University of Montana law librarian to be used for exchanges of material of comparable value with libraries, universities, and institution of higher education in other states, up to 50 copies.

Currently, the branch only purchases copies for the district court judges, the supreme court justices and their law clerks. Branch personnel noted they are not required to purchase the copies because they did not contract to have the decisions published as provided in section 3-2-603, MCA. Section 3-2-603(3), MCA, notes the Department of Administration, on the request of the Supreme Court, shall contract with a publishing house to publish volumes of the reports containing decisions of the Supreme Court. The law also notes the contract shall provide that copies be sold to state and local government agencies, including the Supreme Court pursuant to 3-2-604, at the cost of publication.

Section 3-2-603(2), MCA, states the reports containing the supreme court decisions shall also be distributed to any private printing or duplicating concern requesting the reports for publication. Branch

Findings and Recommendations

personnel noted they provide the reports to a private company which publishes the reports and sells them. The Supreme Court purchases the copies, noted previously, from the company at cost. We believe that since the supreme court decisions are published, the Supreme Court should be purchasing the copies as required by section 3-2-604, MCA. The estimated cost to purchase 221 copies of the supreme court decisions is approximately \$40,000 per year.

Branch personnel indicated the supreme court decisions are available on the state bulletin board and soon will be available via the Internet. The state bulletin board may be accessed by the entities who are listed in the state law to receive copies of the decisions. The supreme court decisions are also included in an electronic law research service. As a result, the information is available even though the reports are not sent to all entities.

Recommendation #6

We recommend the branch:

- A. Comply with section 3-2-604, MCA, related to distribution of supreme court decisions, or**
- B. Seek legislation to allow alternative methods of distribution.**

District Court Reimbursements

The branch administers the District Court Reimbursement program. The program is funded by taxes assessed and collected on motor vehicles and deposited in the General Fund. Section 3-5-901, MCA, lists the order of distribution of the vehicle taxes collected as follows:

1. The expenses of the appellate defender program located at the Department of Administration.
2. Funds are then available to reimburse district court expenses in criminal cases, and the branch costs to administer the district court reimbursement program.

3. If there are excess funds available after the branch reimburses district court expenses, then up to \$500,000 of the excess amount must be used for youth court and probation foster care placements. The Department of Public Health and Human Services (DPHHS) must certify to the Supreme Court that appropriations for youth court and probation foster care placements will be inadequate to fund those costs.
4. Any remaining funds available are returned to the counties in the form of grants as directed by section 7-6-2352, MCA. Grants are awarded to counties for district court expenditures in excess of revenue collected. If there are not any excess funds available after the branch reimburses district court expenses, the county is responsible for payment of the balance.

Current procedure followed to pay for youth court and foster care probation placements is inconsistent with the language of the state statute in (3) above. DPHHS administers payments to foster care providers. The Department of Corrections (DOC) reimburses DPHHS out of funds appropriated for youth court and foster care probation placements. Since DOC has the appropriation for these foster care placements, it is in a better position than DPHHS to determine if funds should be requested from the Supreme Court.

DPHHS had a new fiscal officer who was not aware of the language in the law. The language was effective July 1, 1995. Funds were not requested until our audit brought this law to the attention of DOC. DOC requested a supplemental General Fund appropriation of \$3,296,903 in fiscal year 1995-96 for youth court and probation foster care placements. By using \$500,000 of motor vehicle tax funds, the DOC can reduce its General Fund supplemental appropriation request. As a result, the Judicial Branch will have \$500,000 less to distribute to counties in the form of grants.

Recommendation #7

We recommend legislation be enacted to clarify section 3-5-901 (3)(a), MCA, to have the state agency with the youth court and foster care probation placements appropriations certify to the supreme court that these appropriations will be inadequate to fund those costs.

Administration of Leave Laws and Policy

The branch does not record vacation and sick leave for the water court judge. The supreme court administrator's office does not record the leave because the Supreme Court considers the water court judge to be a position similar to the elected supreme court justices and elected district court judges. Elected judges are salaried and do not have leave time available for use or accrual.

However, the Montana Water Court judge is an appointed position under section 3-7-221, MCA, not an elected position, and should be eligible for sick and vacation leave use and accrual based on state law.

This issue was noted in the previous audit report of the Judicial Branch. We recommended the branch record the accrual and use of leave time for the water court judge. The branch disagreed with this recommendation. As a result, the Legislative Audit Division intends to request an Attorney General's Opinion to clarify this issue.

Independent Auditor's Report & Branch Financial Schedules

MONTANA LEGISLATIVE BRANCH

Legislative Auditor
Scott A. Seacat

Legal Counsel:
John Northey



Deputy Legislative Auditors:
Mary Bryson
Operations and EDP Audit
James Gillett
Financial-Compliance Audit
Jim Pellegrini
Performance Audit

LEGISLATIVE AUDIT DIVISION

INDEPENDENT AUDITOR'S REPORT

The Legislative Audit Committee
of the Montana State Legislature:

We have audited the accompanying financial schedules of the Judicial Branch for each of the two fiscal years ended June 30, 1995 and 1996, as shown on pages A-5 through A-16. The information contained in these financial schedules is the responsibility of Judicial Branch management. Our responsibility is to express an opinion on these financial schedules based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial schedules are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosure in the financial schedules. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial schedule presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in note 1, the financial schedules are presented on a comprehensive basis of accounting other than generally accepted accounting principles. The schedules are not intended to be a complete presentation and disclosure of the branch's assets and liabilities.

In our opinion, the financial schedules referred to above present fairly, in all material respects, the results of operations and changes in fund balances of the Judicial Branch for the two fiscal years ended June 30, 1995 and 1996, in conformity with the basis of accounting described in note 1.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James Gillett".

James Gillett, CPA
Deputy Legislative Auditor

August 28, 1996

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JUDICIAL BRANCH
SCHEDULE OF CHANGES IN FUND BALANCES
FOR THE TWO FISCAL YEARS ENDED JUNE 30, 1996

	<u>General Fund</u>	<u>Special Revenue Funds</u>
FUND BALANCE: July 1, 1994	\$ 0 ¹	\$ 465,474
ADDITIONS		
<u>Fiscal Year 1994-95</u>		
Budgeted Revenues & Transfers In	5,094,028	581,008
Nonbudgeted Revenues & Transfers In	12,534	
Cash Transfers In		534,647 ³
Prior Year Revenue Adjustments	497,854 ²	
Prior Year Expenditures	214	
Support From State of Montana	4,665,982	
<u>Fiscal Year 1995-96</u>		
Budgeted Revenues & Transfers In	5,571,740	1,391,799
Nonbudgeted Revenues & Transfers In	150,710	
Cash Transfers In		546,653 ³
Prior Year Revenue Adjustments	4,755	204
Direct Entries to Fund Balance	808	
Support From State of Montana	5,495,383	
Total Additions	<u>21,494,008</u>	<u>3,054,311</u>
REDUCTIONS		
<u>Fiscal Year 1994-95</u>		
Budgeted Expenditures & Transfers Out	9,777,686	1,068,721
Prior Year Expenditure Adjustments	492,926	42,978
Prior Year Revenue Adjustments		464,286 ²
<u>Fiscal Year 1995-96</u>		
Budgeted Expenditures & Transfers Out	10,756,746	1,824,472
Nonbudgeted Expenditures & Transfers Out	121,148	
Prior Year Expenditure Adjustments	345,502	37,259
Total Reductions	<u>21,494,008</u>	<u>3,437,716</u>
FUND BALANCE: June 30, 1996	\$ <u>0</u> ¹	\$ <u>82,069</u>

¹ See note 4 on A-15.

² See note 7 on A-16.

³ See note 5 on A-15.

This schedule is prepared from the Statewide Budgeting and Accounting System. Additional information is provided in the notes to the financial schedules beginning on page A-13.

JUDICIAL BRANCH
SCHEDULE OF TOTAL REVENUES & OTHER ADDITIONS
FOR THE TWO FISCAL YEARS ENDED JUNE 30, 1996

	General Fund	Special Revenue Funds	Total
<u>Fiscal Year 1995-96</u>			
TOTAL REVENUES BY CLASS			
Licenses & Permits	\$ 4,894,421		\$ 4,894,421
Charges for Services	688,639	\$ 1,281,072	1,969,711
Rentals, Leases & Royalties	22,997		22,997
Other Financing Sources	121,148		121,148
Federal		110,931	110,931
Total Revenues	<u>5,727,205</u>	<u>1,392,003</u>	<u>7,119,208</u>
Less: Nonbudgeted Revenues	150,710		150,710
Prior-Year Revenue Adjustments	4,755	204	4,959
Actual Budgeted Revenues	<u>5,571,740</u>	<u>1,391,799</u>	<u>6,963,539</u>
Estimated Revenues	<u>4,202,000</u>	<u>1,745,500</u>	<u>5,947,500</u>
Budgeted Revenues Over(Under) Estimated	<u>\$ 1,369,740</u>	<u>\$ (353,701)</u>	<u>\$ 1,016,039</u>
BUDGETED REVENUES OVER(UNDER) ESTIMATED BY CLASS			
Licenses & Permits	\$ 1,309,865		\$ 1,309,865
Charges for Services	59,875	\$ (304,631) ²	(244,756)
Federal		(49,070)	(49,070)
Budgeted Revenues Over(Under) Estimated	<u>\$ 1,369,740</u>	<u>\$ (353,701)</u>	<u>\$ 1,016,039</u>
<u>Fiscal Year End 1994-95</u>			
TOTAL REVENUES BY CLASS			
Licenses & Permits	\$ 4,468,550		\$ 4,468,550
Charges for Services	1,129,049	\$ 116,722	1,245,771
Rentals, Leases & Royalties	6,817		6,817
Total Revenues	<u>5,604,416</u>	<u>116,722</u>	<u>5,721,138</u>
Less: Nonbudgeted Revenues	12,534		12,534
Prior-Year Revenue Adjustments	497,854 ¹	(464,286) ¹	33,568
Actual Budgeted Revenues	<u>5,094,028</u>	<u>581,008</u>	<u>5,675,036</u>
Estimated Revenues	<u>4,105,000</u>	<u>660,500</u>	<u>4,765,500</u>
Budgeted Revenues Over(Under) Estimated	<u>\$ 989,028</u>	<u>\$ (79,492)</u>	<u>\$ 909,536</u>
BUDGETED REVENUES OVER(UNDER) ESTIMATED BY CLASS			
Licenses & Permits	\$ 941,039		\$ 941,039
Charges for Services	47,989	\$ (4,492)	43,497
Federal		(75,000)	(75,000)
Budgeted Revenues Over(Under) Estimated	<u>\$ 989,028</u>	<u>\$ (79,492)</u>	<u>\$ 909,536</u>

¹ See Note 7 on A-16.

² See Note 6 on A-15.

This schedule is prepared from the Statewide Budgeting & Accounting System. Additional information is provided in the notes to the financial schedules beginning on page A-13.

JUDICIAL BRANCH
SCHEDULE OF TOTAL EXPENDITURES & OTHER REDUCTIONS BY OBJECT BY PROGRAM
FOR THE FISCAL YEAR ENDED JUNE 30, 1996

	Supreme Court Operations	Boards And Commissions	Law Library	District Court Operations	Water Courts Supervision	Clerk Of Court	District Court Reimbursement	Total
PROGRAM EXPENDITURES BY OBJECT								
Personal Services								
Salaries	\$ 1,389,706	\$ 54,960	\$ 171,900	\$ 2,451,099	\$ 358,163	\$ 123,531	\$ 35,176	\$ 4,584,535
Hourly Wages	1,486							1,486
Other Compensation				10,197				10,197
Employee Benefits	287,972	14,534	44,606	1,071,934	108,186	32,402	8,704	1,568,338
Total	<u>1,679,164</u>	<u>69,494</u>	<u>216,506</u>	<u>3,533,230</u>	<u>466,349</u>	<u>155,933</u>	<u>43,880</u>	<u>6,164,556</u>
Operating Expenses								
Services	170,089	69,634	40,595	15,244	1,201	2,098	100	298,961
Supplies & Materials	67,328	8,279	12,357	6,418	6,391	5,020	858	106,651
Communications	33,303	10,659	11,803	1,630	27,558	15,485	1,169	101,607
Travel	80,942	41,433	5,575	119,586	7,311	4,748	200	259,795
Rent	221,306	3,219			38,416	2,627		265,568
Repair & Maintenance	17,169	295	2,406	2,906	4,166	4,517	100	31,559
Other Expenses	64,458	11,431	12,174	24,897	3,514	737	129	117,340
Total	<u>654,595</u>	<u>144,950</u>	<u>84,910</u>	<u>170,681</u>	<u>88,557</u>	<u>35,232</u>	<u>2,556</u>	<u>1,181,481</u>
Equipment and Intangible Assets								
Equipment	127,746	3,476	263,736	3,760	(442)	1,176	1,955	401,407
Intangible Assets	8,525	1,502	91	3,125				13,243
Installment Purchases - Equipment			121,148					121,148
Total	<u>136,271</u>	<u>4,978</u>	<u>384,975</u>	<u>6,885</u>	<u>(442)</u>	<u>1,176</u>	<u>1,955</u>	<u>535,798</u>
Grants								
From State Sources	214,134	(500)					4,989,658	5,203,292
Total	<u>214,134</u>	<u>(500)</u>					<u>4,989,658</u>	<u>5,203,292</u>
Total Program Expenditures	<u>\$ 2,684,164</u>	<u>\$ 218,922</u>	<u>\$ 686,391</u>	<u>\$ 3,710,796</u>	<u>\$ 554,464</u>	<u>\$ 192,341</u>	<u>\$ 5,038,049</u>	<u>\$ 13,085,127</u>
PROGRAM EXPENDITURES BY FUND								
General Fund	\$ 1,994,754	\$ 218,922	\$ 686,391	\$ 3,092,940		\$ 192,341	\$ 5,038,049	\$ 11,223,397
Special Revenue Fund	689,410			617,856	\$ 554,464			1,861,730
Total Program Expenditures	<u>2,684,164</u>	<u>218,922</u>	<u>686,391</u>	<u>3,710,796</u>	<u>554,464</u>	<u>192,341</u>	<u>5,038,049</u>	<u>13,085,127</u>
Less: Nonbudgeted Expenditures			121,148					121,148
Prior-Year Expenditure Adjustments	(4,058)	6,501	6,280	39,848	(431)	11	334,610	382,761
Actual Budgeted Expenditures	<u>2,688,222</u>	<u>212,421</u>	<u>558,963</u>	<u>3,670,948</u>	<u>554,895</u>	<u>192,330</u>	<u>4,703,439</u>	<u>12,581,218</u>
Budget Authority	<u>3,196,851</u>	<u>212,808</u>	<u>559,432</u>	<u>3,677,079</u>	<u>557,385</u>	<u>192,680</u>	<u>5,000,000</u>	<u>13,396,235</u>
Unspent Budget Authority	<u>\$ 508,629</u>	<u>\$ 387</u>	<u>\$ 469</u>	<u>\$ 6,130</u>	<u>\$ 2,490</u>	<u>\$ 350</u>	<u>\$ 296,562</u>	<u>\$ 815,017</u>
UNSPENT BUDGET AUTHORITY BY FUND								
General Fund	\$ 32,910	\$ 387	\$ 469	\$ 6,130		\$ 350	\$ 296,562	\$ 336,808
Special Revenue Fund	475,719 ¹				\$ 2,490			478,209
Unspent Budget Authority	<u>\$ 508,629</u>	<u>\$ 387</u>	<u>\$ 469</u>	<u>\$ 6,130</u>	<u>\$ 2,490</u>	<u>\$ 350</u>	<u>\$ 296,562</u>	<u>\$ 815,017</u>

¹ See Note 6 on A-15.

This schedule is prepared from the Statewide Budgeting & Accounting System. Additional information is provided in the notes to the financial schedules beginning on page A-13

JUDICIAL BRANCH
SCHEDULE OF TOTAL EXPENDITURES & OTHER REDUCTIONS BY OBJECT BY PROGRAM
FOR THE FISCAL YEAR ENDED JUNE 30, 1995

	Supreme Court Operations	Boards And Commissions	Law Library	District Court Operations	Water Courts Supervision	Clerk Of Court	District Court Reimbursement	HB 903 Automation	Total
PROGRAM EXPENDITURES BY OBJECT									
Personal Services									
Salaries	\$ 1,042,637	\$ 47,495	\$ 164,679	\$ 2,311,699	\$ 343,715	\$ 118,123	\$ 33,974	\$ 115,578	\$ 4,177,900
Other Compensation				15,832					15,832
Employee Benefits	217,613	19,428	44,360	1,010,517	105,205	32,978	8,852	30,526	1,469,479
Total	<u>1,260,250</u>	<u>66,923</u>	<u>209,039</u>	<u>3,338,048</u>	<u>448,920</u>	<u>151,101</u>	<u>42,826</u>	<u>146,104</u>	<u>5,663,211</u>
Operating Expenses									
Services	88,667	63,557	1,076	8,669	2,898	1,122		22,170	188,159
Supplies & Materials	44,556	10,128	14,881	7,378	9,262	3,361	753	3,780	94,099
Communications	17,033	9,315	9,931	1,583	25,528	14,280	999	6,252	84,921
Travel	20,558	37,282	3,392	111,648	3,104	1,336	59	22,049	199,428
Rent	175,587	1,940			39,604	1,774			218,905
Repair & Maintenance	11,450	156	5,930	2,143	3,259	4,348	72	1,812	29,170
Other Expenses	56,148	136	13,227	3,282	4,513	155	50	905	78,416
Total	<u>413,999</u>	<u>122,514</u>	<u>48,437</u>	<u>134,703</u>	<u>88,168</u>	<u>26,376</u>	<u>1,933</u>	<u>56,968</u>	<u>893,098</u>
Equipment and Intangible Assets									
Equipment	23,169	2,268	229,297	10,075	5,058			7,689	277,556
Intangible Assets	8,294	14,280	26,249	33,650	422			5,000	87,895
Total	<u>31,463</u>	<u>16,548</u>	<u>255,546</u>	<u>43,725</u>	<u>5,480</u>			<u>12,689</u>	<u>365,451</u>
Grants									
From State Sources	228	15,369					4,368,218	76,275	4,460,090
Total	<u>228</u>	<u>15,369</u>					<u>4,368,218</u>	<u>76,275</u>	<u>4,460,090</u>
Debt Service									
Loans		461							461
Total		<u>461</u>							<u>461</u>
Total Program Expenditures	<u>\$ 1,705,940</u>	<u>\$ 221,815</u>	<u>\$ 513,022</u>	<u>\$ 3,516,476</u>	<u>\$ 542,568</u>	<u>\$ 177,477</u>	<u>\$ 4,412,977</u>	<u>\$ 292,036</u>	<u>\$ 11,382,311</u>
PROGRAM EXPENDITURES BY FUND									
General Fund	\$ 1,705,773	\$ 221,815	\$ 513,022	\$ 2,947,512		\$ 177,477	\$ 4,412,977	\$ 292,036	\$ 10,270,612
Special Revenue Fund	167			568,964	\$ 542,568				1,111,699
Total Program Expenditures	<u>1,705,940</u>	<u>221,815</u>	<u>513,022</u>	<u>3,516,476</u>	<u>542,568</u>	<u>177,477</u>	<u>4,412,977</u>	<u>292,036</u>	<u>11,382,311</u>
Less: Prior-Year Expenditure Adjustments	8,597	11,179	6	54,875		216	461,031		535,904
Actual Budgeted Expenditures	<u>1,697,343</u>	<u>210,636</u>	<u>513,016</u>	<u>3,461,601</u>	<u>542,568</u>	<u>177,261</u>	<u>3,951,946</u>	<u>292,036</u>	<u>10,846,407</u>
Budget Authority	1,778,194	219,599	520,911	3,517,606	546,177	181,245	4,151,945	292,036	11,207,713
Unspent Budget Authority	<u>\$ 80,851</u>	<u>\$ 8,963</u>	<u>\$ 7,895</u>	<u>\$ 56,005</u>	<u>\$ 3,609</u>	<u>\$ 3,984</u>	<u>\$ 199,999</u>	<u>\$ 0</u>	<u>\$ 361,306</u>
UNSPENT BUDGET AUTHORITY BY FUND									
General Fund	\$ 6,018	\$ 8,963	\$ 7,895	\$ 1,991		\$ 3,984	\$ 199,999	\$ 0	\$ 228,850
Special Revenue Fund	74,833			54,014	\$ 3,609				132,456
Unspent Budget Authority	<u>\$ 80,851</u>	<u>\$ 8,963</u>	<u>\$ 7,895</u>	<u>\$ 56,005</u>	<u>\$ 3,609</u>	<u>\$ 3,984</u>	<u>\$ 199,999</u>	<u>\$ 0</u>	<u>\$ 361,306</u>

This schedule is prepared from the Statewide Budgeting & Accounting System. Additional information is provided in the notes to the financial schedules beginning on page A-13.

Notes to the Financial Schedules

For the Two Fiscal Years Ended June 30, 1996

1.

Summary of Significant Accounting Policies

Basis of Accounting

The Judicial Branch uses the modified accrual basis of accounting, as defined by state accounting policy, for its Governmental Funds. In applying the modified accrual basis, the branch records:

Revenues when it receives cash or when receipts are measurable and available to pay current period liabilities.

Expenditures for valid obligations when the branch incurs the related liability and it is measurable.

Expenditures may include entire budgeted service contracts even though the branch received the services in a subsequent fiscal year; goods ordered with a purchase order before fiscal year-end, but not received as of fiscal year-end; and equipment ordered with a purchase order before fiscal year-end. State accounting policy also requires the branch to record the cost of employees' annual leave and sick leave when used or paid.

Basis of Presentation

The financial schedule presentation is in accordance with the policy of the Legislative Audit Committee. For audit reports issued after July 1, 1996, the Legislative Audit Committee approved a new financial schedule presentation for inclusion in agency audit reports. The schedules now include nonbudgeted revenue and expenditure activity and prior year revenue and expenditure adjustments for all financial schedules presented. In addition, financial activity for agency funds, if applicable to the agency, is included in the Schedule of Changes in Fund Balance and Property Held in Trust.

The financial schedules are prepared from the Statewide Budgeting and Accounting System without adjustment. Accounts are organized in funds according to state law. The branch uses the following funds:

Notes to the Financial Schedules

Governmental Funds

General Fund - to account for all financial resources except those required to be accounted for in another fund.

Special Revenue Fund - to account for proceeds of specific revenue sources legally restricted to expenditures for specific purposes. The branch's Special Revenue Funds includes judges' retirement and water development grants in fiscal year 1994-95. In addition, in fiscal year 1995-96 court automation and federal grants are recorded in the Special Revenue Fund.

2. **Annual and Sick Leave**

Employees at the branch accumulate both annual and sick leave. The branch pays employees for 100 percent of unused annual and 25 percent of unused sick leave credits upon termination. Accumulated unpaid liabilities for annual and sick leave are not reflected in the accompanying financial schedules. The branch absorbs expenditures for termination pay in its annual operational costs. At June 30, 1995 and at June 30, 1996, the branch had a liability of \$125,576 and \$138,296, respectively. Supreme court justices and district court judges (44 FTE) are elected officials who do not accumulate annual and sick leave. The reported amounts are recorded for branch employees.

3. **Pension Plan**

Employees are covered by the Montana Public Employees' Retirement System (PERS) or the Montana Judges' Retirement System (JRS). The branch's contribution to these plans are shown below:

	Fiscal Year <u>1994-95</u>	Fiscal Year <u>1995-96</u>
PERS	\$240,095	\$263,184
JRS	<u>574,924</u>	<u>585,758</u>
Total	<u>\$815,019</u>	<u>\$848,942</u>

Section 19-5-404, MCA, requires the branch to contribute to JRS district court fees collected under section 25-1-201, MCA, in an amount equal to 34.71 percent of salaries paid to district court judges and supreme court justices. The branch remits all district court fees collected to JRS. The actuary for the state's retirement systems reported that the contributions provided by the court fees

amounted to 21.10 percent of the salaries. This is a shortfall of 13.61 percent. The actuary went on to note that "Until adequate provision is made for funding the state contribution, it is not possible to conclude the Judges' Retirement System is actuarially sound."

4. **General Fund Balance**

The General Fund is a statewide fund. Each agency does not have a separate General Fund since its only authority is to pay obligations from the statewide General Fund within their appropriation limits. Thus, on an agency's schedules, the General Fund beginning and ending fund balance will always be zero.
5. **Cash Transfers**

Cash Transfers of \$534,647 and \$546,653 in fiscal years 1994-95 and 1995-96, respectively, occurred in the Water Development Special Revenue Fund. This fund accounts for the operation of the state water court. The Judicial Branch shares the accounting entity with the Department of Natural Resources and Conservation (DNRC). DNRC records the revenue and the branch records the expenditures. Because of combined use of the accounting entity, cash transfers are necessary to return the cash balance to zero at year-end.
6. **Funding of Court Information Technology**

The 1995 Legislature approved HB176 (Ch. 361) which imposed a \$5 user surcharge on all criminal, civil, and probate filings in courts of original jurisdiction. The legislature appropriated the anticipated \$978,400 of revenue from the surcharge to the branch to fund court information technology on a statewide basis. The branch collected \$689,162 in user surcharge fees in fiscal year 1995-96 under this program. As a result of not collecting as much revenue as anticipated and not spending all revenue collected, the branch had approximately \$404,000 of appropriation authority remaining in the Special Revenue Fund in the Supreme Court Operations program. Prior to fiscal year 1995-96 court automation projects were funded by the General Fund and expenditures were reported in the HB 903 Automation program.

Notes to the Financial Schedules

7.

Prior Year Revenue Adjustments

In fiscal year 1994-95 the department transferred \$454,128 of prior year revenue from the Special Revenue Fund to the General Fund. This transfer was the correction of an error noted in the previous audit of the branch.

Branch Response

The Supreme Court of Montana
Office of the Court Administrator



PATRICK A. CHENOVICK
Court Administrator

JUSTICE BUILDING — ROOM 315
215 NORTH SANDERS
HELENA, MONTANA 59620-3002
TELEPHONE (406) 444-2621

October 22, 1996

Mr. Scott Seacat, Legislative Auditor
Legislative Audit Division
Room 135, State Capitol Building
Helena, Montana 59620

OCT 24 1996

Dear Mr. Seacat:

This is our response to the final audit of the Judicial Branch for the two fiscal years ended June 30, 1996. I have highlighted your recommendations and provided a response to each recommendation.

Recommendation #1

We recommend the branch record expenditure abatements and expenditure accruals on SBAS in accordance with state law and accounting policy.

RESPONSE -- WE CONCUR

The audit noted five unique instances where the Judiciary made accounting errors involving expenditure accruals or abatements. In three of the five instances it was too late to re-establish the appropriations and make correcting entries. In the remaining two instances the Branch modified procedures to ensure that these types of errors do not reoccur.

Branch personnel will ensure that expenditure abatements and accruals are recorded on SBAS in accordance with state law and accounting policy.

Recommendation #2

We recommend the branch establish procedures to ensure compliance with federal regulations related to matching and eligibility requirements.

RESPONSE -- WE CONCUR

The audit noted that the Branch used estimates or allocations of personnel time and supply costs to determine in-kind contributions provided as match for a federal grant. The audit also stated that the Branch should have reviewed a federal list of entities and individuals who are not eligible to receive federal financial assistance and that the Branch should have obtained a certification from subcontractors that they were eligible to participate in the projects.

Although Branch personnel believe that the method used to allocate and document personnel time and supply costs provided as in-kind match for the federal grants is adequate, personnel have modified time sheets so that actual time spent on the grants is recorded.

The auditors have already determined that Branch subcontractors are eligible to participate in federal programs. Therefore, Branch personnel will obtain the necessary certification and ensure that an eligibility check is performed on any future federal projects.

Recommendation #3

We recommend the branch continue to work with PERD to seek legislation allocating additional revenue to ensure sufficient contributions are made to the Judges' Retirement System as required by state law.

RESPONSE -- WE CONCUR

PERD plans to submit legislation to the 1997 Legislature to ensure sufficient contributions are made to the Judges' Retirement System as required by state law. As quoted in the audit report, the PERD annual financial report states, "At the present time, the JRS is able to meet all current obligations, but the continued funding shortfall has precluded the actuary from certifying the actuarial soundness of this system." Based on reasonable deductions drawn from information in the PERD annual report, the Judges' Retirement System is sound. Net assets of the system have consistently grown over \$1 million per year. Even in fiscal 1995 when 12 members retired, which is an exceptionally high number to retire in the same year, net assets still grew by over \$1 million. Additionally, according to the PERD Annual Financial Report, "Because of increased payroll and benefit payout, the system's total liability grew by 11.4 percent. *This was offset by a 22.6 percent growth in assets.*" It would seem reasonable to conclude that the system is fairly sound when assets grow by almost twice the amount of liabilities.

Branch personnel also question the accuracy of the rates of salary increases and the average age of active judges and retired judges used in the PERD annual report. Further, the full impact of the restriction that prohibits members from receiving retirement benefits prior to age 65 does not seem to have been considered.

Branch personnel are fully aware of and support Constitutional Amendment 25, requiring public retirement systems to be funded on an actuarially sound basis. Branch personnel will provide any assistance and information requested by the Legislature and PERD as they review and evaluate proposed legislation.

Recommendation #4

We recommend the branch:

- A. Charge personal service expenditures to the programs receiving the benefit.**
- B. Work with the legislature to obtain authority to charge personal service expenditures to the programs receiving benefits.**

RESPONSE -- WE CONCUR

The Branch has attempted to comply with prior audit recommendations regarding employee salaries. Where possible, salaries of employees working in multiple programs are proportionately allocated to

those programs. The Branch needs legislative authority to establish an alternative funding source for the position identified in the audit report.

Recommendation #5

We recommend the branch seek legislation to repeal section 3-2-405, MCA, which requires the Clerk of the Supreme Court to settle with the State Auditor.

The Clerk of the Supreme Court is an elected official and will respond to this recommendation.

Recommendation #6

We recommend the branch:

- A. Comply with section 3-2-604, MCA, related to distribution of supreme court decisions, or**
- B. Seek legislation to allow alternative methods of distribution.**

RESPONSE -- WE DISAGREE

The Branch complies with section 3-2-604, MCA. As required by statute, reports of all cases are furnished to West Publishing Company and to any other private printing concern requesting the reports for publication. The Branch then purchases, at a total cost of about \$2,000, 45 copies of each published volume for the District Court Judges, the Supreme Court Justices and their law clerks. Volumes are published five to six times each year so the total annual cost is approximately \$10,000. If 221 copies of each published volume were purchased, the cost would be approximately \$49,725 each year.

The Branch interprets section 3-2-603, MCA, to mean that, if a contract requested by the Branch is in place, then section 3-2-604, MCA, applies for distribution. Because the Supreme Court has not requested the Department of Administration to contract with a publishing house to publish volumes of reports, the Supreme Court is not required to purchase and distribute up to 221 copies from the publisher.

Recommendation #7

We recommend legislation be enacted to clarify section 3-5-901(3)(a), MCA, to have the state agency with the youth court and foster care probation placements appropriations certify to the supreme court that these appropriations will be inadequate to fund those costs.

RESPONSE -- Judicial Branch personnel are not clear regarding this recommendation.

Section 3-5-901, MCA, states:

State assumption of certain district court expenses -- designation as district court criminal reimbursement program.

(1) To the extent that revenue is available under 61-3-509, the state shall fund:

- (a) the following district court expenses in criminal cases only:
 - (i) salaries of court reporters;
 - (ii) fees for transcripts of proceedings;
 - (iii) witness fees and necessary expenses;
 - (iv) juror fees;

(v) expenses for indigent defense; and

(vi) expenses for psychiatric examinations;

(b) the district court expenses, as listed in subsection (1)(a), in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings; and

(c) the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations.

(2) If revenue received under 61-3-509 exceeds the amount appropriated by the legislature to fund the expenses of the appellate defender program, the excess amount is statutorily appropriated, as provided in 17-7-502, to the supreme court to fund the expenses described in subsections (1)(a) through (1)(c) and the costs of administering this section.

(3) If money appropriated for the expenses listed in subsection (1):

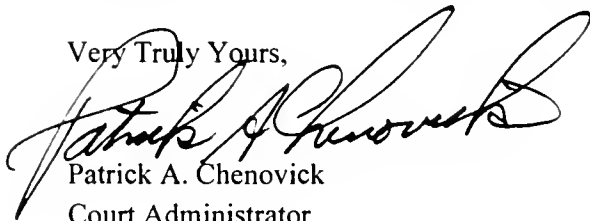
(a) exceeds the amount necessary to fully fund those expenses, up to \$500,000 of the excess amount must be used for youth court and probation foster care placements if the department of public health and human services certifies to the supreme court that appropriations for youth court and probation foster care placements will be inadequate to fund those costs and remaining excess amounts must be used for district court grants as provided in 7-6-2352; or

(b) is insufficient to fully fund those expenses, the county is responsible for payment of the balance.

This recommendation states that the section needs to be clarified. Branch personnel discussed this section with the auditors and provided information that no section of 3-5-901, MCA, is unclear to the Branch. The audit report does not indicate that the Branch performed any of the sections incorrectly.

This recommendation may be more appropriately directed to the executive branch to seek specific clarifying legislation. If the Legislative Auditor has specific direction for the Judiciary please provide it and personnel will certainly respond. We are available to answer any questions or provide any further information that you or the Legislative Audit Committee may require.

Very Truly Yours,



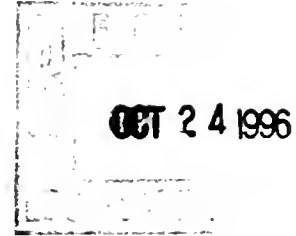
Patrick A. Chenovick
Court Administrator



State of Montana
Office of Clerk of the Supreme Court
Helena 59620
406-444-3858

ED SMITH
CLERK

October 22, 1996



Scott Seacat
Legislative Auditor
P. O. Box 201705
Helena, MT 59620-1705

Dear Mr. Seacat:

I have reviewed the Legislative Audit of the Judicial Branch for the two fiscal years ended June 30, 1996, and concur with the recommendation to repeal section 3-2-405, MCA, which requires the Clerk of the Supreme Court to settle with the State Auditor. This office settles its accounts with the Department of Administration and therefore the responsibility to notify the State Auditor of financial transactions is no longer necessary.

Please find sponsorship for this legislation.

Thank you for your assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ed Smith", with a long horizontal flourish extending to the right.

ED SMITH
Clerk of the Supreme Court

